Editor's note: Appealed -- reversed and remanded, sub nom. American Nuclear Corp. v. Morton, Civ. No. C74-42 (D. Wyo. Feb. 26, 1975), 10th Cir. vacated and remanded to D.Ct. (due to passage of Federal Coal Leasing Amendments Act), reversed, (July 7, 1977), 434 F.Supp. 1035

E. L. LOCKHART et al.

IBLA 73-379, 384-87, 390-98 Decided July 24, 1973

Appeal from Wyoming State Office, Bureau of Land Management, decision of April 25, 1973, rejecting coal prospecting permit applications W-33647, etc.

Affirmed.

Coal Leases and Permits: Applications

> A decision rejecting coal prospecting permit applications will be affirmed where the decision was made pursuant to and in accordance with Secretarial Order 2952 of February 13, 1973.

BY THE BOARD

The appellants named below severally appealed from a decision rejecting their individual coal prospecting permit applications. The decision recited that it was promulgated pursuant to Secretarial Order 2952, which directed that all coal prospecting permit applications must be rejected pending further instructions.

In the main appellants contend that coal prospecting and development in this period of energy shortage should be encouraged by the immediate issuance of the permits. While conceding the Secretary's discretionary authority to refuse to issue a permit, they argue that permits should issue where the Geological Survey raised no objection, where the particular type of coal (e.g., coking coal) is in short supply, or where exploration is undertaken to determine economic workability in connection with nearby deposits under appellants' control. The parties view Secretarial Order No. 2952 as a precipitous action promulgated in an arbitrary and capricious manner and violative of the preference rights of first qualified applicants. They theorize that although a withdrawal (see Executive Order 10355 which appears as a note following 43 U.S.C. §141) would terminate priority rights, the Secretary must provide for preservation of such rights to the time when the lands under application may become available for coal prospecting.

The rejection of an application filed under the Mineral Leasing Act for reasons relating to the public interest is entirely within the discretionary authority of the Secretary. Udall v. Tallman,

380 U.S. 1 (1969); Duesing v. Udall, 350 F.2d 648 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966); Haley v. Seaton, 281 F.2d 620 (D.C. Cir. 1960); Jack E. Griffin, 7 IBLA 155 (1972). Of course, where the land is subject to and available for prospecting, the first filed application will be afforded priority. Udall v. Tallman, supra. However, an application will be rejected where the lands become unavailable for disposition, and the application will not be held in suspense until the lands become available for leasing. M. F. Trask, 4 IBLA 252 (1972); J. G. Hatheway, 68 I.D. 48 (1961). Also see 43 CFR 2091.1.

All questions raised by appellants were considered prior to the Secretary's Order No. 2952 of February 13, 1973. It was the Secretary's studied opinion that the interests of the United States are best served by the action taken. The Order precludes the issuance of any new coal prospecting permits pending preparation of a program for more orderly development. It directed that all applications for prospecting permits shall be rejected pending further instructions. Pursuant to the Mineral Leasing Act, 30 U.S.C. §201(b) (1970), the Secretary is authorized to issue such instructions. We will review the decision below to assure those instructions were followed. Marvin E. Weaster, 10 IBLA 277 (1973); Richard K. Todd, 68 I.D. 291 (1961), aff'd in Duesing v. Udall, supra.

In the instant cases BLM correctly applied the instructions of Order 2952 and properly rejected appellants' coal prospecting permit applications.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions below are affirmed.

APPEARANCES:

E. L. Lockhart, pro se
IBLA 73-379: W-33647-8

Harold S. Bloomenthal, Esq., of Keller, Bloomenthal, McSwain & Wing
for: Elizabeth W. Jenkins IBLA 73-384; W-28516-9, 31193-4
Page T. Jenkins IBLA 73-395, 396; W-28510-2, 36069
Jane P. Wold IBLA 73-393; W-32551-4
John S. Wold IBLA 73-392; W-27532-4;

Marion Lockhart, pro se IBLA 73-385; W-38122-9, 38136

Clear Creek Corp. Karl W. Bergner, Sec'y. IBLA 73-386; W-8894-8901
Kent R. Olson, Esq., for Gulf Mineral Resources Co.
IBLA 73-387; W-25432-25441
Lucy L. Woodward, pro se. IBLA 73-398, 390; W-32650-2, 34100-1, 38597-9
W. H. Pattison, pro se IBLA 73-391; W-38113-38121
Aquarius Resources Corp., Robert V. Bailey, Pres.
IBLA 73-394; W-28157-28163
Brian T. Dolan, Esq., of Davis Graham & Stubbs, for:
Mono Power Co. IBLA 73-397; W-25739, 25740